

## Internal Revenue Service

Department of the Treasury

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Date:

July 06, 2020

TY:

### LEGEND

Taxpayer =

Year 1 =

Country X =

Company Y =

Individual Z =

Professional Advisor =

Year 2 =

Dear :

This is in response to a letter dated January 15, 2020, submitted on behalf of Taxpayer by its authorized representative, requesting an extension of time under Treas. Reg. § 301.9100-3 to make the elections provided under (1) section 953(d) for Year 1 and (2) section 831(b)(2) effective for Taxpayer's taxable year ending December 31, Year 1. Additional information was submitted on June 25, 2020.

The rulings contained in this letter are predicated upon facts and representations submitted by Taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as part of the audit process.

## FACTS

Taxpayer was formed, and is regulated, as an insurance company under the laws of Country X. Taxpayer derives all of its business from reinsuring certain credit insurance products written to customers of Company Y, a related finance company. Taxpayer is wholly owned by Individual Z.

Taxpayer represents that it is an insurance company, as defined in section 831(a) by reference to section 816(a), that would qualify for treatment as a non-life insurance company subject to part II of subchapter L for its taxable year ending December 31, Year 1, if it were a domestic corporation.

Taxpayer and its owner are not tax experts. Taxpayer retained the assistance of Professional Advisor, who is a qualified tax professional, to prepare and file the section 953(d) and section 831(b)(2) elections. Taxpayer represented that it relied on Professional Advisor to file all the necessary income tax elections, including the section 953(d) election for Taxpayer to be treated as a domestic corporation and the section 831(b) election for Taxpayer to be treated as a small insurance company for Year 1.

Professional Advisor sent a separate section 953(d) election statement to the IRS pursuant to Notice 89-79, 1989-2 C.B. 392, and Rev. Proc. 2003-47, 2003-28 C.B. 55. However, the IRS requested additional information from Taxpayer. Professional Advisor did not provide the additional information in a timely manner. In Year 2, Taxpayer discovered that it did not receive an approval of its section 953(d) election from the IRS due to Professional Advisor's error.

Taxpayer represented that Professional Advisor failed to provide the additional information requested by IRS in a timely manner. In addition, Professional Advisor failed to advise Taxpayer of the consequences of failing to make a section 953(d) election with respect to Year 1. Because Taxpayer failed to timely provide the additional information to the IRS, it did not have a valid section 953(d) election in place. Therefore, it remained a foreign insurance company for U.S. federal income tax purposes and, as such, Taxpayer was ineligible to make a section 831(b) election. However, since formation, Taxpayer's federal income tax returns have been filed consistent with the section 953(d) and section 831(b) elections having been properly made.

Taxpayer's failure to make these elections was not discovered by the IRS before Taxpayer submitted its ruling request. In addition, Taxpayer represents that it does not seek to alter a return position for which the accuracy-related penalty has been or could have been imposed under section 6662 at the time Taxpayer requested relief. Taxpayer represents that it intended to make the section 953(d) election but, having inadvertently failed to do so, it was ineligible to make the section 831(b) election.

Finally, Taxpayer represents that it has not used hindsight to seek an extension of time to make the election. Taxpayer represents that granting relief will not result in a lower tax liability than it would have had if it had filed the section 953(d) and section 831(b) elections timely.

Taxpayer represents that it would have made the section 953(d) and 831(b)(2) elections (for which an extension of time under Treas. Reg. § 301.9100-3 is requested) as of the election due date regardless of the enactment of the Tax Cuts and Jobs Act (TCJA) and the issuance of regulations relating to the TCJA.

## LAW AND ANALYSIS

Under section 953(d), certain foreign insurance companies may elect to be treated as domestic corporations for U.S. tax purposes. The substantive and procedural rules for making a section 953(d) election are contained in Notice 89-79, 1989-2 C.B. 392, and Rev. Proc. 2003-47, 2003-2 C.B. 55. Rev. Proc. 2003-47 provides that the election must be filed by the due date prescribed in section 6072(b) (including extensions) for the U.S. income tax return that is due if the election becomes effective. Rev. Proc. 2003-47, section 4.04(2). In addition, an electing corporation must use the calendar year as its annual accounting period for U.S. tax purposes, unless it joins in the filing of a consolidated return and adopts the parent corporation's tax year. Notice 89-79, section 1. In the present situation, Rev. Proc. 2003-47 fixes the time to make the election under section 953(d). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth under Treas. Reg. § 301.9100-3(a).

Section 831(a) provides that taxes, computed as provided in section 11, are imposed for each taxable year on the taxable income of every insurance company other than a life insurance company. However, section 831(b) allows certain small companies to make an election to be subject to tax on their taxable investment income only. The election applies to the taxable year for which the company made the election and, as long as the company continues to qualify, for all subsequent taxable years unless revoked with the consent of the Secretary.

The time and manner to make the section 831(b)(2)(A)(ii) election is not prescribed by statute but rather is prescribed by Treas. Reg. § 301.9100-8. Pursuant to Treas. Reg. § 301.9100-8(a)(2), the election is to be made by the due date (taking into account any extensions of time to file obtained by the taxpayer) of the tax return for the first taxable year for which the election is to be effective by attaching a statement to the tax return containing the information specified in Treas. Reg. § 301.9100-8(a)(3). Accordingly, the section 831(b)(2)(A)(ii) election is a regulatory election. Treas. Reg. § 301.9100-1(b).

Under Treas. Reg. § 301.9100-1(c), the Commissioner may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory or statutory election.

Treas. Reg. § 301.9100-2 does not provide relief for Taxpayer to make an election under section 831(b)(2)(A)(ii) for any of the years for which relief is sought. Requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 must be made under Treas. Reg. § 301.9100-3. Treas. Reg. § 301.9100-3(a) provides that requests for relief will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that it "acted reasonably and in good faith" and that "the grant of relief will not prejudice the interests of the Government."

Under Treas. Reg. § 301.9100-3(b)(1), a taxpayer is deemed to have acted reasonably and in good faith if it:

- (i) Requests relief before the failure to make the regulatory election is discovered by the Internal Revenue Service;
- (ii) Failed to make the election because of intervening events beyond the taxpayer's control;
- (iii) Failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and complexity of the return or issue), the taxpayer was unaware of the necessity for the election;
- (iv) Reasonably relied on the written advice of the Internal Revenue Service; or
- (v) Reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Under Treas. Reg. § 301.9100-3(b)(3), a taxpayer is deemed not to have acted reasonably and in good faith if it:

- (i) Seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested;
- (ii) Was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or
- (iii) Uses hindsight in requesting relief.

The Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. Treas. Reg. § 301.9100-3(c)(1).

The interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Treas. Reg. § 301.9100-3(c)(1)(i).

Treas. Reg. § 301.9100-1(a) cautions that granting an extension of time to make an election is not a determination that the taxpayer is otherwise eligible to make the election.

## CONCLUSION

Based solely on the facts and information submitted, and the additional information required under Treas. Reg. § 301.9100-3(e), Taxpayer qualifies for an extension of time to make the elections under section 831(b)(2)(A)(ii) and section 953(d). Taxpayer is deemed to have acted in good faith, as defined by Treas. Reg. § 301.9100-3(b), and the grant of relief will not prejudice the interests of the Government.

Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to make the section 953(d) election, in accordance with the procedural rules set forth in Rev. Proc. 2003-47, to be treated as a domestic corporation for U.S. federal income tax purposes effective for Year 1. Also, under Treas. Reg. § 301.9100-3, Taxpayer is granted an extension of time until 90 days following the date of this letter to make the election provided by section 831(b)(2)(A)(ii), effective for Taxpayer's taxable year ending December 31, Year 1.

The above extension of time is conditioned on Taxpayer's tax liability (if any) being not lower, in the aggregate, for all years to which the section 953(d) and section 831(b) elections apply than it would have been if the elections had been timely filed (taking into account the time value of money). No opinion is expressed as to Taxpayer's tax liability for the years involved. No opinion is expressed or implied concerning the federal income tax consequences of any other aspect of this or other transactions or item of income. Further, the granting of the above extension is not a determination that Taxpayer qualifies as an insurance company under section 831(c) or that Taxpayer is otherwise eligible to make the section 953(d) and section 831(b)(2) elections. Treas. Reg. § 301.9100-1(a). Also, no ruling is granted with respect to Taxpayer's entity classification for federal income tax purposes.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representative.

Sincerely,

Kristine A. Crabtree  
Senior Technical Reviewer, Branch 2  
Office of Associate Chief Counsel (International)

cc: